

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Instream Lease Application) DETERMINATION and
IL-1546, Deschutes County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Central Oregon Irrigation District (COID)
Craig Horrell, District Manager
1055 SW Lake Ct.
Redmond, OR. 97756
khamby@coid.org

Lessee

Deschutes River Conservancy (DRC)
Gen Hubert, Water Leasing Program Manager
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On April 20, 2016, COID and the DRC filed an application to lease a portion of Certificate 83571 for instream use. The Department assigned the application number IL-1546.
2. Interest in a portion of the water right to be leased instream has been conveyed from the original land owners. The lease application identifies Central Oregon Irrigation District (COID) as the interest holder in the portion of the water right to be leased. Individual agreements, along with supporting documentation, identify that interest in a portion of the right to be leased is held by COID. For the purpose of this instream lease, the Department has determined that COID is an interest holder in the right and is authorized to lease the pertinent portion of the water right instream.

3. The portion of the right to be leased is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District

Use: Irrigation of 69.515 acres, 4.6 acres equivalent of Pond Maintenance and 3.0 acres equivalent of Quasi-Municipal Use

Priority Date: October 31, 1900 and December 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31

May 1 through May 14 & September 16 through September 30

May 15 through September 15

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/80 cubic foot per second (cfs) per acre

Season 2: limited to 1/60 cfs per acre

Season 3: limited to 1/32.4 cfs per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.91 acre-feet (af) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss on the main canals (POD No. 1 and 11) as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 18 S | 11 E | WM | 13 | SW NE | POD No. 1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13 |
| 17S | 12E | WM | 29 | SE NE | POD No. 11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE E¼ CORNER OF SECTION 29 |

Authorized Places of Use:

| IRRIGATION | | | | | | | |
|------------|------|-----|-----|-----|-------|--------|----------------------------------|
| POD | Twp | Rng | Mer | Sec | Q-Q | Acres | Supplemental Information Tax Lot |
| 11 | 14S | 13E | WM | 16 | SW NE | 10.80 | 103 |
| 11 | 14S | 13E | WM | 21 | SW NW | 0.20 | 407 |
| 11 | 15S | 13E | WM | 03 | NW SW | 10.82 | 1400 |
| 11 | 15S | 13E | WM | 05 | NE SE | 4.00 | 300 |
| 11 | 15S | 13E | WM | 05 | SE NE | 5.24 | 300 |
| 11 | 15S | 13E | WM | 08 | NW SE | 18.10 | 100 |
| 11 | 15S | 13E | WM | 09 | SW SW | 0.50 | 400 |
| 11 | 15S | 13E | WM | 09 | SW SW | 0.80 | 500 |
| 11 | 15S | 12E | WM | 19 | NE NE | 12.83 | 705 |
| 11 | 16S | 12E | WM | 14 | SW SE | 3.19 | 1000 |
| 1 | 18 S | 13 | WM | 12 | NW NE | 3.035 | 200 |
| Total: | | | | | | 69.515 | |

| POND MAINTENANCE | | | | | | | |
|------------------|-----|-----|-----|-----|------|-------|--------------------------|
| POD | Twp | Rng | Mer | Sec | Q-Q | Acres | Supplemental Information |
| 11 | 15S | 13E | WM | 8 | NWSE | 0.90 | 100 |
| 1 | 17S | 13E | WM | 20 | NESW | 3.70 | 403 |
| Total: | | | | | | 4.60 | |

| QUASI-MUNICIPAL | | | | | | | |
|-----------------|-----|-----|-----|-----|------|-----------------|--|
| POD | Twp | Rng | Mer | Sec | Q-Q | Acre Equivalent | |
| 1 | 16S | 14E | WM | 15 | NESW | 3.00 | |
| 1 | 16S | 14E | WM | 15 | NWSW | | |
| 1 | 16S | 14E | WM | 15 | SWSW | | |
| 1 | 16S | 14E | WM | 15 | SESW | | |
| 1 | 16S | 14E | WM | 15 | NESE | | |

| QUASI-MUNICIPAL | | | | | | |
|-----------------|-----|-----|-----|-----|------|-----------------|
| POD | Twp | Rng | Mer | Sec | Q-Q | Acre Equivalent |
| 1 | 16S | 14E | WM | 15 | NWSE | |
| 1 | 16S | 14E | WM | 15 | SWSE | |
| 1 | 16S | 14E | WM | 15 | SESE | |
| 1 | 16S | 14E | WM | 22 | NENE | |
| 1 | 16S | 14E | WM | 22 | NWNE | |
| 1 | 16S | 14E | WM | 22 | SWNE | |
| 1 | 16S | 14E | WM | 22 | SENE | |
| 1 | 16S | 14E | WM | 23 | NWNW | |
| 1 | 16S | 14E | WM | 23 | SWNW | |
| Total: | | | | | | |

4. The Department has information that the season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

Season of Use: April 1 to November 1, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as Season 1

May 1 to May 15 and September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

5. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 3), the total rate and duty for the water right would be exceeded. In the event water was diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs (described in Finding of Fact No. 3), the portion of the right involved in this instream lease would be limited as described in the tables below. These rates and duty are also the quantities by which the diversion at POD Nos. 1 and 11 under Certificate 83571 shall be reduced, if this instream lease is approved.

Pod No. 1 (Central Oregon Canal)

| Priority Date | Season 1 | Season 2 | Season 3 | Duty |
|----------------------|-----------|-----------|-----------|----------|
| Irrigation Use | | | | |
| October 31, 1900 | 0.038 cfs | 0.050 cfs | 0.066 cfs | 29.75 af |
| December 2, 1907 | - | - | 0.027 cfs | |
| Pond Maintenance Use | | | | |
| October 31, 1900 | 0.046 cfs | 0.061 cfs | 0.081 cfs | 36.27 af |
| December 2, 1907 | - | - | 0.032 cfs | |
| Quasi-Municipal Use | | | | |
| October 31, 1900 | 0.037 cfs | 0.049 cfs | 0.066 cfs | 29.41 af |
| December 2, 1907 | - | - | 0.026 cfs | |
| Total Use Suspended | | | | |
| October 31, 1900 | 0.121 cfs | 0.160 cfs | 0.213 cfs | 95.43 af |
| December 2, 1907 | - | - | 0.085 cfs | |
| Total CFS | 0.121 cfs | 0.160 cfs | 0.298 cfs | |

POD No. 11 (COID North Canal)

| Priority Date | Season 1 | Season 2 | Season 3 | Duty |
|---------------------|-----------|-----------|-----------|-----------|
| Irrigation Use | | | | |
| October 31, 1900 | 0.759 cfs | 1.035 cfs | 1.412cfs | 627.33 af |
| December 2, 1907 | - | - | 0.565cfs | |
| Pond Maintenance | | | | |
| October 31, 1900 | 0.010 cfs | 0.014 cfs | 0.019 cfs | 8.49 af |
| December 2, 1907 | - | - | 0.008 cfs | |
| Total Use Suspended | | | | |
| October 31, 1900 | 0.769 cfs | 1.049 cfs | 1.431 cfs | 635.82 af |
| December 2, 1907 | - | - | 0.573 cfs | |
| Total CFS | 0.769 cfs | 1.049 cfs | 2.004 cfs | |

6. There is a supplemental irrigation right, Certificate 76714, appurtenant to all, or a portion of the lands described in the above Findings of Fact. The Lessor and Lessee have requested that this water rights not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
7. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
8. The Lessor and Lessee have requested that instream flows resulting from conversion of pond maintenance and quasi-municipal use only be protected instream from the PODs (as described in Finding of Fact No. 3) to Lake Billy Chinook.
9. The Lessor and Lessee have requested that instream flows resulting from conversion of irrigation use be protected instream from the PODs (as described in Finding of Fact No. 3) to the mouth of the Deschutes River. Portions of the water diverted at the PODs return to the Deschutes River within the proposed reach and are available to downstream water right holders. Return flows from the existing use are generally back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.
10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
The Deschutes River, tributary to the Columbia River

Instream Reach No. 1: From POD No. 1 to POD No. 11 (as described in Finding of Fact No. 3)

| Certificate | Priority Date | Use | Instream Rate (CFS) | | | Instream Volume (AF) | Period Protected Instream |
|---------------|---------------|-----|---------------------|--------------|--------------|----------------------|---------------------------|
| | | | Season 1 | Season 2 | Season 3 | | |
| 83571 | 10/31/1900 | IR | 0.021 | 0.028 | 0.052 | 16.54 | April 1 – October 26 |
| | | PM | 0.025 | 0.034 | 0.063 | 20.17 | |
| | | QM | 0.021 | 0.028 | 0.051 | 16.35 | |
| Total: | | | 0.067 | 0.090 | 0.166 | 53.06 | |

Instream Reach No. 2: From POD No. 11 to the Madras Gage

| Certificate | Priority Date | Use | Instream Rate (CFS) | | | Instream Volume (AF) | Period Protected Instream |
|---------------|---------------|-----|---------------------|--------------|--------------|----------------------|---------------------------|
| | | | Season 1 | Season 2 | Season 3 | | |
| 83571 | 10/31/1900 | IR | 0.478 | 0.637 | 1.181 | 378.89 | April 1 – October 26 |
| | | PM | 0.031 | 0.043 | 0.078 | 25.08 | |
| | | QM | 0.021 | 0.028 | 0.051 | 16.35 | |
| Total: | | | 0.530 | 0.708 | 1.310 | 420.32 | |

Instream Reach No. 3: From the Madras Gage to the mouth of the Deschutes River

| Certificate | Priority Date | Use | Instream Rate (CFS) | Instream Volume (AF) | Instream Period |
|-------------|---------------|-----|---------------------|----------------------|-------------------------|
| 83571 | 10/31/1900 | IR | 0.302 | 125.13 | April 1 through Oct. 26 |

11. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 83571 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

13. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion.
- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected in Instream Reach No. 3 has been reduced to account for return flows.

14. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.

15. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.

16. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.

17. Based upon review of the application, information provided by the Department's Watermasters, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
18. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
19. The Lessor and Lessee have requested that the lease terminate on October 31, 2016. The lease may commence on the date this final order is signed.

Conclusions of Law

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2016.

Dated at Salem, Oregon this 24 day of May 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: MAY 25 2016

*This document was prepared by
Joan Smith, if you have questions;
please call 503-986-0892.*